



# Pretrial Justice Reform for NC

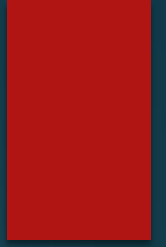
JESSICA SMITH

W. R. KENAN, JR. DISTINGUISHED PROFESSOR  
UNC SCHOOL OF GOVERNMENT

# Why pretrial justice reform?

## What is pretrial justice reform?

# Why



# PRETRIAL JUSTICE REFORM FOR NORTH CAROLINA

## NCCALJ COMMITTEE ON CRIMINAL INVESTIGATION & ADJUDICATION REPORT

OCTOBER 2016

The Committee unanimously recommends that the Chief Justice appoint a Pretrial Justice Study Team (Study Team) to carry out a Pilot Project to implement and assess legal- and evidence-based pretrial justice practices. As used here, the term legal- and evidence-based pretrial justice practices refers to practices that comport with the law and that are driven by research. Such practices have been endorsed by many justice system stakeholder groups, including the Conference of Chief Justices; the Conference of State Court Administrators; the International Association of Chiefs of Police; the National Sheriffs' Association; the Association of Prosecuting Attorneys; the National Legal Aid and Defenders Association; the National Association of Criminal Defense Lawyers; the National Association of Counties; and the American Bar Association. Their use has been shown to produce excellent results. With one exception, legal and evidence-based pretrial justice practices are not in place in North Carolina. Although one North Carolina jurisdiction—Mecklenburg County—has implemented some of these practices, all such practices are not in place in that jurisdiction and to date rigorous evaluation of their implementation has not been done. The Committee recommends implementing and evaluating the full range of legal- and evidence-based pretrial justice practices identified below in North Carolina through a Pilot Project in five to seven counties.

### Background

After identifying pretrial justice reform as a top priority for its work, in February 2016, the Committee received an overview of how pretrial release currently works in North Carolina; heard from John Clark, senior manager, Technical Assistance, Pretrial Justice Institute (PJI) and a team of experts about current research and developments in pretrial risk assessment and risk management; and visited Mecklenburg County's experience with pretrial justice reform; and heard from Mecklenburg County's experience with the same. In the Spring of



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- Recommended by NCCALJ

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- Period between arrest & trial

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- Most Defs are entitled to conditions



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  - Study shows: Pretrial detention creates crime

Harris County TX Study: Detained misdemeanor Defs have:

- 30% increase in new felony charges and
- 20% increase in new misdemeanor charges

Heaton, Mayson & Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford Law Review 711, 718 (2017)

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- Costs
  - Detention costs



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Low level  
charges



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  - Detention costs
  - Recidivism costs, law enforcement costs, etc.

# Why

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- Fairness

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  - Incarceration based on poverty, not risk



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Philadelphia: Almost ½ of defendants who only needed to post a \$500 deposit to obtain release failed to do so within 3 days of the bail hearing

Stevenson, Distortion of Justice: How the Inability to Pay Affects Case Outcomes, Journal of Law, Economics & Organization (manuscript at 10-11) (forthcoming)

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## Harris County TX Study:

Only about 30% of defendants from the wealthiest zip codes are detained pretrial, versus around 60-70% of defendants from the poorest zip codes.

Heaton, Mayson & Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford Law Review 711, 737 (2017)

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“[a] . . . basic injustice: poor arrestees . . . are incarcerated where similarly situated wealthy arrestees are not, solely because the indigent cannot afford to pay a secured bond.”

ODonnell v. Harris County, 892 F.3d 147, 162 (5<sup>th</sup> Cir. 2018)

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  - Incarceration increases likelihood of adverse consequences

# Why

Harris County TX Study: As compared to those who are released, detained misdemeanor Defs:

- are 25% more likely to be convicted
- are 43% more likely to be sentenced to jail
- get, on average, incarceration sentences are 9 days longer, more than double that of similar releasees

Heaton, Mayson & Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford Law Review 711, 717 (2017)

# Why

Philadelphia Study: Pretrial detention leads to:

- 13% increase in the likelihood of being convicted
- 42% increase in the length of the incarceration sentence

Stevenson, Distortion of Justice: How the Inability to Pay Affects Case Outcomes, Journal of Law, Economics & Organization (manuscript at 3) (forthcoming)



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  - Incarceration increases likelihood of adverse consequences
  - Coerced pleas/wrongful convictions

# Why

Harris County TX Study:

“detention increases the likelihood of pleading guilty by 25% for no reason relevant to guilt”

Heaton, Mayson & Stevenson, The Downstream Consequences of Misdemeanor Pretrial Detention, 69 Stanford Law Review 711, 771 (2017)

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  - Incarceration increased consequences
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- Racial & ethnic disparities

# Why



## SAFETY+JUSTICE CHALLENGE

Supported by the John D. and Catherine T. MacArthur Foundation

### Mecklenburg County 2017 Safety and Justice Challenge Factsheet

#### *We've got a problem to fix:*

- Despite reducing the Mecklenburg County jail population by 25 percent in the last five years, there is still an over-reliance on incarceration.
- Too often, a jail stay depends on a defendant's ability to pay bail, and individuals spend more time in jail and pay more in bail and fees than they would serving time in prison.
- Pretrial release and length of stay are main drivers of the jail population. The average pretrial jail population alone was 64 percent of the total average daily population in 2016.
- Despite making up approximately 33 percent of the local population, African Americans and Hispanics make up 76 percent of the jail population.
- In 2016, the County released 36 percent of booked defendants on financial bond. Automating the completion of the Public Safety Assessment (PSA) tool will help ensure that judicial officials can access each defendant's individualized assessment of risk when determining their conditions of release.

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- Fairness
- Racial & ethnic disparities
- Litigation risk



Maranda Lynn O'DONNELL, Plaintiff—Appellee

v.

HARRIS COUNTY, Texas; Eric Stewart Hagstette; Joseph Licata, III; Ronald Nicholas; Blanca Estela Villagomez; Jill Wallace; Paula Goodhart; Bill Harmon; Natalie C. Flemng; John Clinton; Margaret Harris; Larry Standley; Pam Derbyshire; Jay Karahan; Judge Analía Wilkerson; Dan Spjut; Judge Diane Bull; Judge Robin Brown; Donald

Smyth; Jean Hughes, Defendants—Appellants

Loetha Shanta McGruder; Robert Ryan Ford, Plaintiffs—Appellees

v.

Harris County, Texas; Jill Wallace; Eric Stewart Hagstette; Joseph Licata, III; Ronald Nicholas; Blanca Estela Villagomez, Defendants—Appellants

No. 17-20333

June 1, 2018

### Synopsis

**Background:** Arrestees brought § 1983 action, on behalf of themselves and others similarly situated, against county, county sheriff, county judges, and other county officials, alleging that county's system for setting bail for indigent misdemeanor arrestees, which resulted in detention of indigent arrestees solely due to their inability to pay bail, violated Equal Protection and Due Process Clauses. The United States District Court for the Southern District of Texas, [Lee H. Rosenthal](#), Chief Judge, [251 F.Supp.3d 1052](#), granted plaintiffs' motion for preliminary injunction and denied county's motion for summary judgment. County appealed.

**Holdings:** On rehearing, the Court of Appeals, [Edith Brown Clement](#), Circuit Judge, held that:

- 1 under Texas law, county judges were appropriate defendants in § 1983 action;
- 2 under Texas law, county sheriff was not appropriate defendant in § 1983 action;
- 3 abstention under Younger doctrine was not warranted;
- 4 provision of Texas Constitution requiring that prisoners be bailable upon sufficient sureties created right to bail that appropriately weighed detainees' interest in pretrial release and court's interest in securing detainees' attendance;
- 5 county's bail-setting procedures were inadequate to protect detainees' Due Process rights; and
- 6 county's bail-setting procedures violated indigent arrestees' rights to equal protection.



Maranda Lynn O'DONNELL, Plaintiff—Appellee

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Loetha Shanta Mcgruder; Robert Ryan Ford, Plaintiffs—Appellees

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### Synopsis

**Background:** Arrestees brought § 1983 actions against Harris County judges, and other county officials, alleging that the county's detention of indigent arrestees solely due to their inability to pay bail violated their rights. The United States District Court for the Southern District of Texas granted the arrestees' preliminary injunction and denied county's motion for summary judgment.

**Holdings:** On rehearing, the Court of Appeals affirmed the district court's decision.

1 under Texas law, county judges were appointed for life terms.

2 under Texas law, county sheriff was not a judge.

3 abstention under Younger doctrine was not warranted.

4 provision of Texas Constitution requiring that bail be set at a reasonable amount, appropriately weighed

detainees' interest in pretrial release and court's interest in securing detainees' attendance;

5 county's bail setting procedures were inadequate to protect detainees' Due Process rights; and

6 county's bail-setting procedures violated indigent arrestees' rights to equal protection.

Harris County, TX bail  
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protection

county sheriff, county  
which resulted in  
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plaintiffs' motion for

“[T]he essence of the district court's equal protection analysis can be boiled down to the following: take two misdemeanor arrestees who are identical in every way—same charge, same criminal backgrounds, same circumstances, etc.—except that one is wealthy and one is indigent.

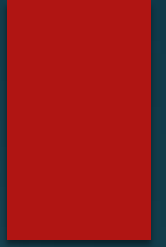
Applying the County's current custom and practice, with their lack of individualized assessment and mechanical application of the secured bail schedule, both arrestees would almost certainly receive identical secured bail amounts. One arrestee is able to post bond, and the other is not. As a result, the wealthy arrestee is less likely to plead guilty, more likely to receive a shorter sentence or be acquitted, and less likely to bear the social costs of incarceration. The poor arrestee, by contrast, must bear the brunt of all of these, simply because he has less money than his wealthy counterpart. The district court held that this state of affairs violates the equal protection clause, and we agree.”

ODonnell v. Harris County, 892 F.3d 147, 163 (5<sup>th</sup> Cir. 2018)

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  - Create a feedback loop

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  - Encouraging citation/summons for low-risk defendants
  - Early participation by defense counsel & prosecutor
  - Prompt review of magistrate's pretrial decision
  - Create a feedback loop
  - Implement court date reminder system

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- Better way of assessing risk

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  - More robust pretrial release proceedings

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  - Screening tools

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  - Require first appearance for all in custody defendants
  - Constitutional preventative detention procedure

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- “Right-sizing” risk management
- Rigorous empirical evidence
- Statutory changes
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- “Right-sizing” risk management strategies
- Rigorous empirical evaluation
- Statutory changes
  - Require first appearance for all in custody defendants
  - Constitutional preventative detention procedure
  - Repeal provisions that allow Def/others to opt out of conditions



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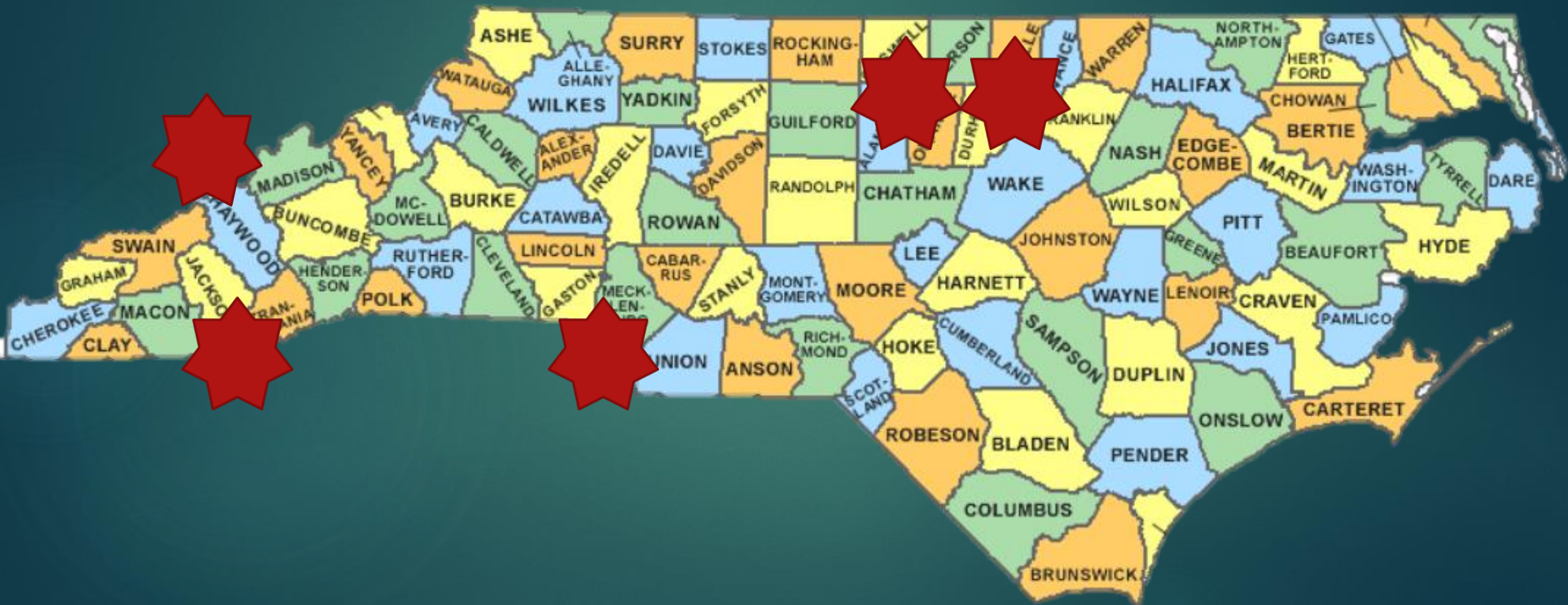


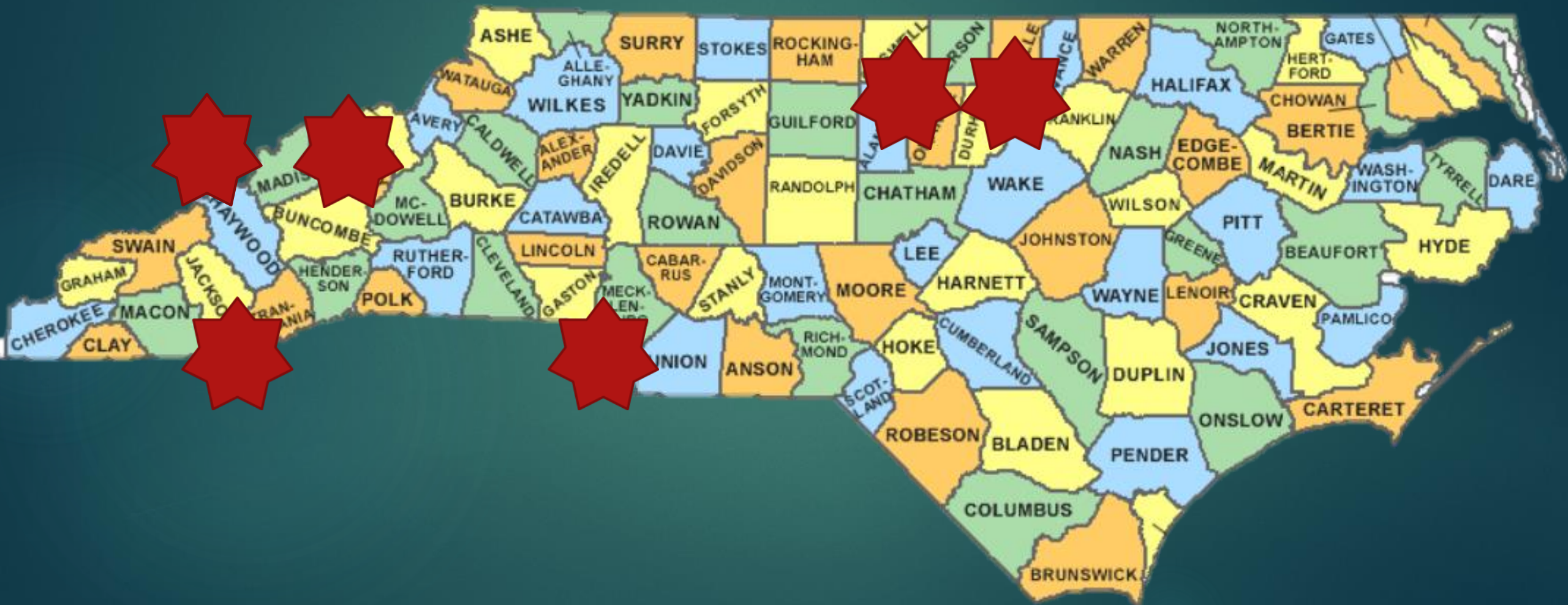






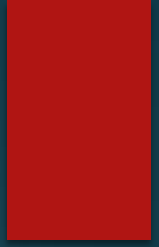








# Measuring Justice







# Measuring Justice

## 1. Baseline Survey



# Measuring Justice

1. Baseline Survey
2. Foundational Studies



# Measuring Justice

1. Baseline Survey
2. Foundational Studies
3. Site-Specific Studies



# Pretrial Justice Reform

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